

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIE L. WILSON and DEPARTMENT OF THE AIR FORCE,
HEADQUARTERS, WRIGHT PATTERSON AIR FORCE BASE, OH

*Docket No. 99-2464; Submitted on the Record;
Issued January 3, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation effective November 9, 1997 on the grounds that he had no disability after that date due to his March 22, 1994 employment injury.

The Board finds that the Office met its burden of proof to terminate appellant's compensation effective November 9, 1997 on the grounds that he had no disability after that date due to his March 22, 1994 employment injury.

Under the Federal Employees' Compensation Act,¹ once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.² The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.³ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

On March 22, 1994 appellant, then a 48-year-old motor vehicle operator, sustained employment-related cervical and lumbar strains. He received compensation for various periods of disability.⁵ By decision dated October 31, 1997, the Office terminated appellant's

¹ 5 U.S.C. §§ 8101-8193.

² *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

³ *Id.*

⁴ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁵ The Office had previously accepted that appellant sustained various injuries to his lower extremities between 1971 and 1992. He also received schedule awards for permanent impairment of his right leg. Appellant was terminated from the employing establishment in May 1994.

compensation effective November 9, 1997 on the grounds that he had no disability after that date due to his March 22, 1994 employment injury.⁶ The Office based its termination on the opinion of Dr. Ronald Moser, a Board-certified orthopedic surgeon who served as an independent medical examiner. By decision dated and finalized July 22, 1999, the Office affirmed its October 31, 1997 decision.

In the present case, the Office determined that there was a conflict in the medical opinion between Dr. John Lochner, appellant's attending Board-certified orthopedic surgeon and Dr. Stephen Pledger, a Board-certified orthopedic surgeon acting as an Office referral physician, regarding whether appellant continued to have residuals of the March 22, 1994 employment injury. In reports dated September 18 and October 30, 1995 and May 29, 1996, Dr. Lochner indicated that appellant continued to have disability due to his March 22, 1994 employment injury, cervical and lumbar strains. In a report dated January 3, 1996, Dr. Pledger noted that the examination of appellant's back and neck was essentially normal and indicated that he no longer had any disability due to his March 22, 1994 employment injury. In order to resolve the conflict, the Office properly referred appellant, pursuant to section 8123(a) of the Act, to Dr. Moser for an impartial medical examination and an opinion on the matter.⁷

In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁸

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Moser, the impartial medical specialist selected to resolve the conflict in the medical opinion. The November 6, 1996 report of Dr. Moser establishes that appellant had no disability due to his March 22, 1994 employment injury after November 9, 1997.

In his report, Dr. Moser determined that appellant no longer had disability due to his March 22, 1994 employment injury, cervical and lumbar strains. He reported the findings of his examination and indicated that appellant exhibited normal results, including full range of motion, upon examination of his cervical and back regions. Dr. Moser noted that diagnostic testing did not reveal any abnormalities other than congenital changes in the low back. He indicated that appellant did not exhibit any objective signs of his March 22, 1994 injury and noted that his soft-tissue employment injury had since resolved itself. Dr. Moser stated that appellant did not have any disability related to his neck or back.

⁶ The Office previously terminated appellant's compensation in July 1994, but it later set aside this termination and remanded the case for further development of the medical evidence.

⁷ Section 8123(a) of the Act provides in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." 5 U.S.C. § 8123(a).

⁸ *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

The Board has carefully reviewed the opinion of Dr. Moser and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. His opinion is based on a proper factual and medical history in that he had the benefit of an accurate and up-to-date statement of accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical evidence. Moreover, Dr. Moser provided a proper analysis of the factual and medical history and the findings on examination, including the results of diagnostic testing and reached conclusions regarding appellant's condition which comported with this analysis.⁹ He provided medical rationale for his opinion by explaining that appellant did not exhibit any objective signs of his March 22, 1994 injury, cervical and lumbar strains. Dr. Moser also noted that appellant's employment injury was the type of injury which would have resolved itself.

The record contains reports, dated between April 1997 and August 1998, in which Dr. Lochner discussed his treatment of appellant's right knee and left shoulder problems. He did not indicate, however, that these problems caused disability or that they constituted employment-related conditions. As noted above, the Office had previously accepted that appellant sustained various injuries to his lower extremities between 1971 and 1992, but the record does not reflect that these injuries caused continuing disability.¹⁰

The decision of the Office of Workers' Compensation Programs dated and finalized July 22, 1999 is affirmed.

Dated, Washington, DC
January 3, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member

⁹ See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

¹⁰ Appellant did not receive disability compensation for these earlier injuries after March 1994.